IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7151 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TALSHIBEN MULJIBHAI

Versus

DIST DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 7151 of 1991
MS SUDHA R GANGWAR for Petitioner No. 1
NOTICE SERVED for Respondent No. 1
(MR BK PARIKH) for Respondent No. 2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 09/01/2002

ORAL JUDGEMENT

1. Talshiben Muljibhai, petitioner has filed this petition with a prayer that this Court may direct the respondents to pay the family pension to which the

petitioner is legally entitled from the date of the death of her son with arrears with interest thereon till the date of payment.

2. The facts giving rise to this petition are as under:-

2.1 The petitioner is a widow mother of Purohit Jivram Muljibhai, who expired on 9.10.1978. It has been stated in the petition that Jivrambhai Muljibhai son of petitioner was serving as a peon at Tharad Gram Panchyat office for a permanent post. It has been submitted that she is old lady of 82 years and there is no body to look after her and therefore she is entitled to get family pension after the death of her son. She has also applied for getting family pension to the authority but the authority did not grant the pension. In view of the same, she has filed the present petition somewhere in October 1991. In support of the same she has also filed affidavit in this behalf.

2.2 When the matter was placed for hearing before this Court, initially on 7th October, 1991, this Court issued notice and ultimately on 15th September, 1992, the matter was admitted and rule was made returnable.

3. Heard learned advocate for the petitioner and learned advocate for the respondents.

4. On behalf of respondent No.2 Nagar Panchayat Tharad, District Banaskantha, affidavit of one Shri M.M.Gadhvi, who is Secretary of Tharad Nagar Panchayat has filed this affidavit somewhere on 16th December, 1991. In the affidavit it has been stated that the petitioner is a mother of deceased Purohit Jivram Muljibhai who was a peon at Tharad Gram Panchayat and who expired in the year 1978. It was submitted that the petitioner is legally not entitled to the family pension after the death of her son Purohit Jivram Muljibhai under the Family Pension Scheme 1972 framed by the State of Gujarat under Resolution No.FPS-1071-J dated 1.1.1972. It was submitted that under the aforesaid scheme, benefits of family pension is not provided for the widow mother of the deceased government servant. A copy of the family pension scheme is also annexed with the petition. The said scheme defined the word "family". The word `family' includes wife in the case of a male government servant, husband in the case of a female government servant, minor sons and unmarried or minor daughters but it does not include the name of mother and, therefore, it was submitted that the mother is not entitled to family

pension.

4.1 Over and above, in the affidavit it has also been stated that the son of deceased Purohit Jivram has been serving as a daily wager peon in the Tharad Nagar Panchayat from 1.9.1990, who looks after the petitioner and therefore it is not true and not admitted that there is nobody to look after the petitioner and she has no other source to maintain herself and she is entitled to get family pension after the death of her son. It was also stated that in this case the son expired in the year 1978 whereas present petition filed in the year 1991 and therefore there is gross delay in filing the petition therefore also the petition is not maintainable.

5. In my view, in view of the first contention raised by the respondent as per the family scheme the mother is not entitled for the pension and therefore the present petition is not maintainable and therefore the petitioner has no legally enforceable right under the law. Over and above an equity part also the son of deceased was serving as a daily wager and therefore also the grievance of the petitioner does not survive in this behalf.

In view of the same, the petition is dismissed with no order as to costs. Rule is discharged.

(K.M. Mehta, J.)

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